IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.586/2005
(Shree Raj. Texchem Ltd. Vs. State & Ors.)

Date of Judgment : 13.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. L.R. Mehta, for the petitioner.
Mr. Bheem Arora, for the respondents.

By way of filing this writ petition, the petitioner has prayed for quashing the impugned notice dated 3.1.2005 as well as communication dated 11.1.2005 issued by the Municipal Board, Dungarpur with regard to depositing Octroi. It is also prayed in the writ petition by the petitioner that the recovery proceedings initiated in pursuance of the impugned notice may also be set aside.

In this case, earlier, a writ petition was preferred by the petitioner against the Municipal Board, Dungarpur with regard to levy of Octroi, which was rendered infructuous in view of the fact that Octroi was abolished w.e.f. 1.8.1998. Against the

said order, the Municipal Board preferred an appeal being DB Special Appeal (Writ) No.955/98 before this Court with regard to Octroi which was due prior to 1.8.1998. The Division Bench while disposing off the aforesaid special appeal vide order dated 7.10.1999 observed as follows :

> "The facts which are not in dispute are that octroi was abolished with effect from 1.8.1998. The dispute is regarding for payment of octroi by respondents no.2 and 3 to the appellant only for the period 15.6.98 to 31.7.98. In the light of the order of the learned Single Judge, the State Government has now considered the representation and passed the order directing the respondents no.2 and 3 to pay octroi for the aforesaid period. The respondents no.2 and 3 have filed undertaking before the appellant and also they have stated in the reply to the writ petition that they would be liable to pay octroi subject to the decision of the State Government. In the light of the these facts, we are of the opinion that no further exercise is required to be done in the appeal on the merits of the contentions raised by the parties particularly in view of the abolition of octroi from 1.8.1998. It is open to the appellant to proceed in accordance with law to recover the octroi for the aforesaid period. It is equally open to the respondents to adopt such a course as available to them in law in regard to the payment of octroi. We make it clear that order of the learned Single Judge dismissing the writ petition as having become

> infructuous does not prejudice the contentions of the parties."

It is contended by the learned counsel for the petitioner that the State Government earlier issued direction to the Municipal Board Vide Annexure-2 that till the decision in the matter is taken, an undertaking may be taken from the petitioner Company and later on as per the decision of the State Government, they will be abide to deposit octroi. It is contended by the learned counsel for the petitioner that this fact was also observed in the aforesaid judgment passed by Hon'ble Division Bench in special appeal decided on 7.10.99.

According to the learned counsel for the petitioner, the matter has not yet been decided by the State Government and notice for recovery of octroi was issued to the petitioner. This fact was also brought to the notice of the Municipal Board, Dungarpur but still they are insisting upon to recover the octroi for the period commencing from 15.6.1998 to 31.7.1998. Thus, it is prayed that in this view of the fact that when the matter is still pending with the State Government, it is appropriate to direct the State Government to decide the matter within the stipulated period and to take final decision as observed in communicated dated 20.6.1998 (Annexure-2), which reads as under :

राजस्थान सरकार
स्वायत्त शासन विभाग

क्रंमाक : एफ.1(10)सीमा/एलएसजी/86/5734 दिनांक 20.6.98

अध्यक्ष / अधिशासी अधिकारी,
नगरपालिका,
डूंगरपुर ।

विषय : नगरपालिका डूंगरपुर की सीमा वृद्धि के संबंध में ।

उपरोक्त विषयान्तर्गत लेख है कि विभागीय अधिसूचना क्रमांक : एफ.1(सीमा)(10)स्वा.शा./86/5711-25 दिंनाक 30.5.98 के कारण ग्राम उदयपुरा व पत्तापुरा ग्राम पंचायत सूरपुर को नगरपालिका डूंगरपुर की सीमा में सम्मिलित कर विस्तार किया गया है । उक्त अधिसूचना की पालना में नगरपालिका डूंगरपुर के आदेश क्रंमाक : राजस्व/नपाडूं/98-99/2687-92 दिनांक 15.6.98 के द्वारा उक्त विस्तारित सीमा में आयातित माल पर चूंगी वसूली के आदेश जारी हुए । उक्त आदेश के विरूद्व श्री राजस्थान सिन्टैक्स लि० व श्री राजस्थान टैक्सकेन लि० डूंगरपुर द्वारा औधोगिक नीति के क्रम में आपत्ति प्रस्तुत की गई है ।

निर्देशानुसार लेख है कि उपराक्त दोनों इकाइयों के द्वारा आयातित सामान को इस आशय की अण्डर टेकिंग लेकर बिना चुंगी चुकाये प्रवेश करनें देवें कि यदि राज्य सरकार द्वारा यह निर्णय लिया जाता है कि उक्त इकाइयों द्वारा चुंगी देय होगी तो वे सम्पूर्ण चुंगी कर राशि का भुगतान नगरपालिका को करेंगें । राज्यसरकार द्वारा जो भी निर्णय लिया जावेगा वह इकाइयों को मान्य होगा व उसी के अनुरूप कार्यवाही हेतु वे पाबन्द रहेंगें साथ ही सम्पूर्ण आयातित सामान का ब्यौरा भी रखा जावे ।"

It is submitted by the learned counsel appearing on behalf of the Municipal board, that the matter has been decided by the State Government and in

view of that impugned notice has been issued by the Municipal Board. However, upon perusal of entire record of the file, it is revealed that the said decision of the State Government is not on record.

Therefore, in this view of matter, it is directed that in case the State Government has already decided the matter with regard to depositing octroi by the petitioner for the period commencing from 15.6.1998 to 31.7.1998, the Municipal Board, Dungarpur shall be free to take action against the petitioner in accordance with the law and the petitioner shall be at liberty to raise all his objections, if any, before the Municipal Board, Dungarpur. The Municipal Board, Dungarpur after deciding the objections, if so raised by the petitioner, shall proceed in the matter as per the decision of the State Government. The said exercise be done by the Municipal Board, Dungarpur within a period of three months from today.

With the aforesaid observation and direction, the writ petition is disposed of.

(GOPAL KRISHAN VYAS), J.

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